

Naval Inspector General



Washington Navy Yard, DC



Conscience of the Navy...Making a Difference!



Complaint Resolution Procedure

Conscience of the Navy...Making a Difference

**Using Ethics Regulations
AND MORE**



Using Ethics Regulations Enabling Learning Objectives

- Describe how the Office of Government Ethics (OGE) regulations are used in IG investigations.
- Explain when to use the Joint Ethics Regulations (JER) or DoD Directive 5500.7, in IG investigations.
- Explain how the Office of Government Ethics (OGE) Regulations and Standards of Conduct (JER) relate to each other.
- Depending on the issue presented to the IG, apply the standards of conduct or other pertinent regulation(s), for example:
 - **Gift giving among DoD employees or to DoD employees from contractors**
 - **Use of commercial air travel**
 - **Use of government passenger vehicles**



Standards Used in IG Investigations

Standards you will use in an IG Investigation:

- DoD Directive 5500.7 – Standards of Conduct
- OGE Regulations / Code of Federal Regulations
- DoD Instructions
- SECNAV / OPNAV Instructions
- Command Instructions
- U.S. Navy Regulations
- U.S. Code
- Joint Travel Regulations
- FAR



Two Main Sources of Standards

- Office of Government Ethics (OGE) Regulations
 - Various Provisions or “Parts” Found in Title 5 of the Code of Federal Regulations (CFR)
- DoD Directive 5500.7 – Standards of Conduct
 - Authorizes DoD Regulation 5500-7R, the Joint Ethics Regulation (JER)



OGC Regulation of Primary Interest

- Standards of Ethical Conduct for Employees of the Executive Branch
- Published in the Code of Federal Regulations at 5 CFR 2635
- Apply to Executive Agency Officers and Civilian Employees
- Agency Supplements require prior OGC approval



Other Pertinent OGE Regulations

- **5 CFR 2634** – Financial Disclosures, Qualified Trusts, Certificates of Divestiture
- **5 CFR 2636** – Limitation on Outside Employment, Prohibition of Honoraria and Reporting Payments to Charities in Lieu of
- **5 CFR 2640** – Interpretation of 18 USC 208 (Acts Affecting Financial Interests)
- Post-Employment Conflict of Interest
 - **5 CFR 2637** (employees leaving before 1991)
 - **5 CFR 2641** (employees leaving after 1990)



Structure of 5 CFR 2635

- A. General
- B. Gifts from Outside Sources
- C. Gifts Between Employees
- D. Conflicting Financial Interests
- E. Impartiality in Performing Official Duties
- F. Seeking Other Employment
- G. Misuse of Position
- H. Outside Activities



DoD Joint Ethics Regulation 5500.7-R

- OGE Approved Supplement to 5 CFR 2635 (Standards of Conduct Reg)
- No Further Supplementation Permitted (No Navy Reg)
- Intended to be “Single Source of Standards of Ethical Conduct and Ethical Guidance” (nice try)
- Authorized by DoD Directive 5500.7



List of Chapters in DoD JER

1. General Information
2. Standards of Ethical Conduct
3. Activities with Non Federal Entities
4. Travel Benefits
5. Conflicts of Interest
6. Political Activities
7. Financial and Employment Disclosure
8. Seeking Other Employment
9. Post Government Service Employment
10. Enforcement
11. Training
12. Ethical Conduct



Relationship of OGE 2635 to JER Chapter 2

- Both are “Standards of Conduct”
- Section 1 of JER Chapter 2 “contains” OGE 2635
- Section 2 of JER Chapter 2 is DoD “Agency Supplement” to OGE 2635
- Section 3 of JER Chapter 2 is DoD “Guidance” on specific issues (gifts, use of resources, gambling, use of military title by retirees or reserves)



OGE and JER Working Together

- **PO Johnson says:**

“Because the OGE Regs don’t apply to me, I may accept a \$30 lunch from a Navy contractor, even though LT Evans may not.”

- See 5 CFR 2635.103 (the provisions of this part are not applicable to enlisted members)
- Is PO Johnson right?



OGE and JER Working Together (cont)

- **No! PO Johnson is Wrong!**
- **Why?**
 - DoDD 5500.7 Par B1a says “employee” in OGE regs includes enlisted to same extent as officers (applies to several OGE parts)
 - JER Par 1-211 definition of “DoD employee” includes enlisted personnel (and Reserves and National Guard on Title 10 active duty orders)



OGE and JER Working at Odds?

- **Hotline Complainant says:**

“Some Navy personnel attending EB sub launch
improperly accepted gifts of model subs
worth \$75 each in violation of OGE gift regs!”

- 5 CFR 2635.202(a)(1) says employees may not accept gifts from prohibited sources
- **Is Hotline Complainant right?**



OGE and JER Working at Odds? (cont)

- **Maybe Not! JER May Permit It!**
 - Even though value exceeds one time and annual limits listed in 5 CFR 2635.204 exceptions
- **Why?**
 - JER Par 2-300 (DoD Guidance) allows “tangible gifts” at ship launch and similar ceremonies up to \$100 “per family” when employee’s attendance is official and approved by head of the Command
 - So you need to develop more facts to know the answer, but you may need only a PI to answer!



One More Case

- Your CO is retiring. Some Command employees ask if they may request “voluntary contributions” of \$15 for a retirement gift. They tell you 5 CFR 2635.304 allows solicitation of contributions of “nominal amounts” and \$15 seems very “reasonable.”
- **What do you say in response?**



One More Case (cont)

- **You should explain that although OGE does not establish a specific maximum “nominal” amount for group gifts, the JER does: \$10.00.**
 - Refer them to JER Par 2-203b (the “supplement to the OGE reg), which establishes the \$10 limit for contributions to the gift itself, but allows solicitation of a larger voluntary “nominal amount” for food, drink, and entertainment of the superior.
 - Tell them the facts - refer them to SJA for advice!



General Orders and Violation of UCMJ

- Watch out! Words in bold italics are General Orders and violation may result in prosecution under the UCMJ!
 - JER 2-203a – **DOD employee may not accept gift from group he/she knows or has reason to know includes subordinates if fair market value of gift exceeds \$300.**
 - JER 2-203b – **Nominal amount of voluntary contribution DOD employee may solicit from another DOD employee for group gift for special, infrequent occasion shall not exceed \$10.00.**



Applying Regulations to Issues

Point Paper and Utilization Guides

- Fraternization (1 Aug 05)
- Gifts Guide (17 Oct 06)
- Mental Health Referral (1 Nov 05)
- Post Employment Restrictions - E1 to O6 (25 Jul 06)
- Post Employment Restrictions - Flag Officers (19 Sep 06)
- Use of Appropriated Funds to Purchase Food for Events (12 May 06)
- Use of Command Coins (1 Apr 05)
- Use of Commercial Air Travel (17 Nov 05)
- Use of Flag Aides (17 Nov 05)
- Use of Personal Quarters Culinary Specialists (1 Apr 05)
- Use of Military Air Travel (1 Apr 05)
- Use of Official Representation Funds (1 Apr 05)
- Use of Government Passenger Vehicles (1 Apr 05)
- Whistleblower/Reprisal Guidance (27 Oct 05)



Gift Giving

- The basic rule: an employee shall not solicit or accept, directly or indirectly, a gift from a prohibited source or given because of the employee's official position.
- Prohibited source: any person or entity that does or seeks to do business with the employee's agency, or has interests that may be substantially affected by the employee's official duties.
- Official position: The test is whether the gift would have been given had the employee not held the status, authority, or duties.
- Indirect gifts include gifts to a spouse, child, or dependent relative.



Gift Giving Standards

- DoD 5500.7-R, Joint Ethics Regulations
- 5 CFR § 2635
- 5 USC § 7342 (Foreign Gifts and Decorations Act)
- 31 USC §1353 (Travel from Non-Federal Sources)
- DoDD 1005.13, Gifts and Decorations from Foreign Governments
- SECNAVINST 4001.2G, Acceptance of Gifts



Travel Rules - Commercial

- Commercial Air
 - Generally must travel coach class
 - Premium class RARELY AUTHORIZED -
 - Must be approved by Reporting Senior
 - Upgrades may not be accepted when offered because of official position
 - Dependents
 - Travel usually not funded
 - ITOs and per diem
 - Must use contract carriers/city-pairs (with limited exceptions)



Travel Rules - Commercial Standards

- DODD 4500.9
- DOD 4500.9-R
- JFTR U3125/JTR C2204
- JFTR U1200/ JTR C1200
- JFTR Appendix E
- 41 CFR Ch. 304
- OPNAVINST 4610.8E
- OPNAVINST 4650.15
- CNO memos of 15 Jul 02



Proper Use of Vehicles

- Official use only - essential to the mission and consistent with the purpose of the vehicle
- Home-to-Work (HTW) - not official use unless specifically authorized; extremely limited
- May be used for official attendance at social event, but, unless authorized HTW, may only use between work (not home) and the event
- Spouse may accompany on space-available with no added-cost basis



Proper Use of Vehicles Standards

Applicable standards:

- 31 USC § 1344, **Passenger Carrier Use**
- 10 USC 2637
- 41 CFR part 102-5
- DODD 4500.36
- DODD 4500.36-R
- JFTR ¶ U3200/JTR ¶ C2050



Using Ethics Regulations AND MORE

Questions??